

Day of *April*, shall be as good and effectual in the Law, to all Intents, Constructions, and Purposes, as if such Trial had been had and tried by twelve of the Jurors impanelled and returned upon the Writ of *Venire facias*, awarded to try such Issue.

IX. And in case such person as the said Sheriff, Minister or Ministers, shall name and appoint, as is aforesaid, or any of them, after they shall be called, be present, and do not appear, or after his or their Appearance do wilfully withdraw him or themselves from the presence of the Court, that then such Justices shall and may set such a fine upon every such Juror making default, or wilfully withdrawing himself, as is aforesaid, as they shall think good by their discretion; (2) the said fine to be levied in such manner and form as Issues forfeited and lost by Jurors, for default of their appearance at the Common Law, have been accustomed to be levied.

Made perpetual by 2 & 3 Ed. 6, c. 32.

VI. *Tales de circumstantibus*, at the Plaintiff's Request. By 5 El. c. 25, this Section extended to the twelve Shires in *Wales*, &c. By 4 & 5 Ph. & M. c. 7. A *Tales* may be granted on a *Qui Tam*, &c. 1 Roll. 52. 2 Roll. 76, 183, 394. Poph. 35. Dyer, 200, 376 b.

VII. Challenges of the *Tales*. 10 Co. 102 b.

If from challenges, or any other cause, a sufficient number of unexceptionable jurymen do not appear at the trial, the judge at *nisi prius* by virtue of this Statute and 4 & 5 P. & M. c. 7, and 14 Eliz. c. 9, is authorized, at the prayer of either party, in capital cases as in others, to award a *tales de circumstantibus* present in Court as are qualified to be joined with the other jurors to try the cause. Such a *tales* cannot be granted where the whole panel is challenged, for it must then be quashed and a new jury returned. *Tales-men* are subject to like challenges to the poll as the principal jurors. And one of the latter, if challenged, ought not to be sworn as a *tales-man*, *Parker v. Thoroton*, 1 Str. 640, where a new trial was granted for this reason.

The exposition of this Statute is given in *Denbawd's case*, 10 Rep. 102 b, to which it is sufficient generally to refer. In *Burk v. the State*, 2 H. & J. 426, one of the questions was, whether when nine jurors were sworn and the rest of the original panel exhausted by peremptory challenges, and the prisoner being entitled to five more peremptory challenges, the Court could legally order the Sheriff to summon only three *tales-men*, and again, when eleven were sworn, to summon but one. And it was determined in the affirmative. The Court may, however, to prevent the delay that might be occasioned by the defendant's challenges, award a greater number than
365 *was on the original panel. The award of *talesmen* must be repeated until the legal number of twelve is completed, a subsequent *tales* being always for a less number than the preceding.